IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22649 of 2003

Between:

1 M/s Girijan Co-op.Corporation Ltd., rep.by its Vice Chairman and Managing Director., Mr.A.Vidya Sagar.
2 The Regional Manager., Girijan Co-op. Corporation Ltd., Hyderabad., 4th Floor., Telugu Samkshema Bhavan., Masab Tank., Hyderabad.

..... PETITIONERS

AND

1 The Industrial Tribunal -II., M.J.Road., Hyderabad.
2 Sri K.Suryakantha Rao s/o K.B.Chary.,
R/o 2-3-763/2/1., Tulasinagar., Golnaka., Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of a Writ of Certiorari, by declaring the Award passed by the 1st Respondent as illegal, arbitrary, unwarranted and against the provisions of the I.D.Act and against the Corporation Rules apart from being violative of Articles 14 and 19 of the Constitution of India and consequentially quash the impugned Award No.73/2003, Dated 19-08-2003 (on the file of the Industrial Tribunal -II., Hyderabad)

Counsel for the Petitioner: MR.N.SRIDHAR REDDY

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Mr. A. Sanjeev Kumar

The Court made the following:

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 22649 of 2003

-

-

O R D E R:

Challenging the award in I.D. No. 73 of 2002 dated 19.8.2002 on the file of Industrial Tribunal-II, Hyderabad, the present writ petition is filed.

The brief facts that are necessary for the disposal of this case are as follows:

The 2nd respondent herein was working as Godown clerk at the time of incident. Due to certain irregularities, the petitioner was placed under suspension and a regular departmental enquiry was ordered against him in view of the allegations pointed out in the audit report. A charge sheet was issued on 18.3.1992 consisting of three charges. Later two more charges were added. The Enquiry Officer after conducting regular departmental enquiry submitted a report. Having accepted the Enquiry Officer's report a show-cause notice was given as to why the petitioner should not be removed from service for embezzlement of funds of the Corporation. The 2nd respondent submitted an explanation. As the explanation was not satisfactory, he was removed from service. The 2nd respondent herein raised an Industrial Dispute. The learned Chairman of the Industrial Tribunal-II held that the petitioner-Corporation did not adduce the evidence to prove the charges leveled against the petitioner and therefore the punishment imposed against the petitioner should be held failed and accordingly ordered for reinstatement of the petitioner with continuity of service. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner – Corporation contended that the award passed by the 1st respondent is illegal and that without giving a finding that the domestic enquiry was held to be bad, the question of adducing evidence by the management does not arise. Though the docket order shows that the domestic enquiry was not according to the principles of natural justice, but what are the principles of natural justice that have been infringed or not followed in the domestic enquiry have not been pointed out and therefore he prays to set aside the findings.

On the other hand, learned counsel for the respondent No.2 contended that the Tribunal has given a finding that the domestic enquiry is held to be bad in view of the fact that the principles of natural justice have not been followed. The question of placing reliance on the domestic enquiry does not arise and it is for the management to adduce evidence to show that the enquiry was conducted after affording reasonable opportunity in accordance with law and therefore the finding of the Industrial Tribunal cannot be said to be perverse or contrary to law and therefore there are no grounds to interfere with the impugned award.

There cannot be any dispute that this court can interfere with the finding of the Tribunal when there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard to the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. In the decision making process if the Tribunal has ignored vital evidence and thereby arrived at an erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, then this court can review the said finding or order so as to prevent gross injustice to the party complaining. Now it has to be seen whether the findings of the Tribunal are perverse or the result of misinterpretation of the judgment of the Supreme Court.

The apex Court in **Neeta Kaplish v. Presiding Officer, Labour Court and another** held:

> "In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the management or the employer to justify the action taken against the workman and to show by fresh evidence, that the termination or dismissal order was proper. If the management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the management, the validity of the action taken by it has to be scrutinized and adjudicated upon on the basis of such fresh evidence.

From the above decision it is clear that in case where enquiry has been found to be defective the Tribunal can call upon the management or the employer to justify the action taken, by adducing the evidence. From the above decision it is also clear that in the first instance the tribunal shall, as a preliminary issue, decide the validity of the domestic enquiry. If the finding on the preliminary issue is in favour of the management, then the question of adducing additional evidence may not arise. In case if the finding on the preliminary issue is against the management, then the tribunal shall give the employer an opportunity to adduce additional evidence before the court. Therefore, the law is well settled that before calling upon the management to adduce the evidence there must be a finding that fair and proper enquiry was not conducted by the Enquiry Officer or that the enquiry has been found to be defective. Therefore, it is the duty of the tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management are valid and proper.

The observations of the Industrial Tribunal read as

follows:

> "through the docket order dated 2.7.2003 it was held that domestic enquiry was not according to the principles of natural justice and hence it was held that the domestic enquiry is vitiated".

Thereafter the Tribunal gave a finding that after holding that the domestic enquiry is vitiated, the burden lies on the management to adduce evidence to justify that the workman was guilty of the charges leveled against him and the punishment imposed against the workman was appropriate. As the management did not adduce any evidence and there was no representation on behalf of the management, the workman would be entitled for reinstatement with backwages and with continuity of service. The docket order dated 2.7.2003 reads as follows:

> "from the records it was crystal clear that no witness was examined by the management to prove the charges against the petitioner. The domestic officer observed that the records show the misconduct of the petitioner and he may mention the names of persons to summon for cross-examination by the petitioner with respect to the above mentioned documents. Without examining the witnesses in chief by the management, cross-examination question does not arise. Without examining the witnesses and without proving the documents through the witnesses, relying on them by the Enquiry Officer was against the principles of natural justice. Hence held that the domestic enquiry vitiated. For management evidence – 22/7".

There cannot be any dispute that the evidence to substantiate the case may be oral or documentary. In case of oral evidence, his evidence is required to be examined. In case of documentary evidence, they have to be brought on record. Even without examination of oral evidence the case can be proved beyond

preponderance of probabilities against a person or delinquent in the departmental enquiry. It is always not necessary to examine any witness. It is for the Enquiry Officer to decide whether the material on record would substantiate the case against the delinquent employee. Therefore, without examination of the witnesses it cannot be said that the principles of natural justice have been violated. It is no doubt true that summoning of a witness for cross-examination does not arise unless he is examined in chief, but at the same time when the documents were not properly brought on record and especially when the delinquent is not disputing or denying about the documents relied upon by the management, there is no reason to examine any witness to prove those documents. So, on that ground it cannot be said that the domestic enquiry is vitiated. The strict rules of the Evidence Act may not be applicable in the departmental proceedings though the general principles of the Evidence Act will be applicable. What are the principles of natural justice that have been violated have not been specifically stated in the docket order dated 2.7.2003. There must be a clear finding that the enquiry was not held properly or that the enquiry held is defective. For arriving at such a decision, the tribunal is expected to record reasons. The reasons for coming to the conclusion that the domestic enquiry is vitiated are found lacking in the docket order dated 2.7.2003. Proof of documents is not necessary when the delinquent admits those documents. So, on that ground it cannot be said that the principles of natural justice have been violated. The reasons for a decision must be intelligible and they must be adequate. Right to reason is an indispensable part of a sound judicial system. Failure to give reasons amounts to denial of justice. One of the statutory requirements of natural justice is spelling out reasons from the order made. Reasons introduce clarity in an order, more so, in a case of misappropriation or embezzlement of funds of a Corporation. The learned tribunal misinterpreted the judgment of the Supreme Court in **Neeta Kaplesh's** case by merely giving a finding that the domestic enquiry is vitiated, without recording any reasons. Therefore, the order under challenge suffers from serious legal infirmities. Only basing on the docket order dated

2.7.2003 the tribunal gave a finding that the petitioner – corporation did not adduce any evidence and therefore the 2nd respondent is liable to be reinstated into service with backwages. Therefore, it is liable to be set aside.

In the result, the award dated 19.8.2003 is set aside and the matter is remitted to the Tribunal to decide whether the domestic enquiry held by the Corporation is proper and whether the enquiry is defective and there upon decide the matter in accordance with the law laid down by the apex court in **Neeta Kaplesh's** case. Since the case is relating to removal of petitioner in the year 1998, it is desirable to direct the Tribunal to dispose of the Industrial Dispute within a period of three months from the date of receipt of a copy of this order

The writ petition is accordingly allowed and remitted.

_____

K.C. Bhanu, J.

Date: June, 2005.

MVB.

Rule Nisi has been made absolute above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Wednesday the Twenty Second day of June Two Thousand and Five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Industrial Tribunal -II., M.J.Road., Hyderabad.
2. Two C.Cs. to the G.P. for Labour, High Court Buildings, Hyderabad (OUT).

3. 2 CD copies